

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 648 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?-No.
 2. To be referred to the Reporter or not?-No. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?-No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.
 5. Whether it is to be circulated to the Civil Judge?-No. :

CHANDNABEN CHHOTOLAL

Versus

TRUSTEES OF SHRI VISA SHRIMALIVANIK GNATI

Appearance:

MR JR NANAVATI for Petitioners
Mr.R.N. Shah for the respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/05/2000

ORAL JUDGEMENT

1. This Revision Application is directed against the order passed by the Assistant Judge, Porbandar in Regular Civil Appeal No.15 of 1983, by which the learned appellate Judge has dismissed the appeal filed by the petitioners herein by confirming the decree of possession passed by the trial court.

2. The facts leading to the present revision application are as under :-

That the plaintiffs filed Regular Civil Suit No.307 of 1980, in the Court of Civil Judge (J.D.), Porbandar to recover the possession of the suit premises on the ground of arrears of rent as well as on the ground of acquisition of alternative suitable premises by the defendant-tenants. It is also the case of the plaintiffs that the defendants are keeping the suit premises closed and the same was not used for a period of six months immediately preceding the date of the suit. On the aforesaid ground, the suit for possession was filed by the plaintiffs.

3. The defendants appeared in the suit and filed their written statement Exhibit 11. They denied the claim of the plaintiffs for possession on all the grounds. It was contended that the suit notice for demanding arrears of rent was not legal and valid, that the recovery of the rent at the rate of Rs.8.25 Ps. is excessive and unreasonable and that the standard rent should be fixed at the rate of Rs.4/- per month. They denied the ground about arrears of rent and that of non-user of the suit premises.

4. The defendant No.2 filed a separate written statement at Exhibit 13, which was on the same line as that of the defendant No.1.

5. The learned trial Judge framed necessary issues arising out of the pleadings of the parties and after recording the evidence and hearing the argument of both the sides, decreed the suit of the plaintiffs for possession. The aforesaid decree was challenged by the tenants by filing Regular Civil Appeal No.15 of 1983. The said appeal was heard by the learned Assistant Judge, Porbandar, who dismissed the said appeal with costs by confirming the decree for possession passed by the trial court. The unsuccessful tenants have preferred this revision application, challenging the decree of the trial court.

6. I have heard Mr.J.R. Nanavaty, learned Advocate for the petitioner and Mr.R.N. Shah for the respondents.

7. So far as the case about acquisition of suitable premises as well as regarding non-user of the suit appeal, the points regarding arrears of rent and

acquisition of alternative suitable premises were not pressed and the only ground which was pressed in the appeal was non-user of the property, as contemplated by Section 13(1)(k) of the Bombay Rent Act. The appellate court, therefore, has decided the point only regarding non-user of the suit property. At this stage, reference to Section 13(1)(k) is required to be made. Section 13(1)(k) provides as under :-

" 13. When landlord may recover possession.-(1) Notwithstanding anything contained in this Act but subject to the provisions of Sections 15 and 15-A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

xxx xxx xxx

(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit; or

xxx xxx xxx "

8. On behalf of the plaintiffs, one Anilkumar Ramani was examined at Exhibit 25. According to the evidence of that witness, after the death of the original tenant Chotalal, his heirs were brought on record. The defendant No.1 is the widow of the said deceased Chotalal and the defendants Nos. 2 and 3 are his sons. It is stated by him that the suit premises is closed. One Pravinchandra, who is occupying his shop in the neighbourhood, is also examined at Exhibit 35. He is one of the Trustees of the suit Trust. He has also categorically stated that the suit premises is found to be closed. The learned trial Judge has considered evidence of witnesses of plaintiffs and on appreciating the same, it was found that the defendants were not using the suit property. It seems that the defendants have left Porbandar for Calcutta for ever. Some correspondence by the defendant No.1 from Calcutta is also produced on record. It is found that the defendant No.1 was residing at Calcutta since 1978 and she continued to stay there continuously without in any way concerned with the suit property at Porbandar. There is overwhelming evidence on record for coming to the conclusion that the suit premises was not used for a

considerable time. The learned appellate Judge has considered the evidence on record in great detail in paragraphs 14, 15, 16 and 17 of his judgment. It is, therefore, clear that the suit property is not used for a considerable period and in that view of the matter, the landlords were entitled to get the decree for possession on the aforesaid ground under Section 13(1)(k) of the Bombay Rent Act. In that view of the matter, it cannot be said that the view taken by the appellate court is in any way contrary to law. This Court, while sitting in revision, cannot re-appreciate the evidence on record. Even if the evidence is to be re-appreciated, no other view, other than the one taken by the appellate court as well as by the trial court, so far as the question of non-user is concerned, is possible. In that view of the matter, I do not find any substance in this Civil Revision Application. The same is accordingly dismissed. Rule is discharged. Ad Interim relief is vacated. No order as to costs.

4th May, 2000 (P.B. Majmudar, J.)

(apj)